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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTO BARBA,

Defendant and Appellant.

E061542

(Super.Ct.No. FWV1301576)

OPINION

APPEAL from the Superior Court of San Bernardino County. Jon D. Ferguson, Judge. Affirmed as modified.

Patrick Morgan Ford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Minh U. Le, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Roberto Barba pled no contest to second degree burglary of a vehicle. (Pen. Code¹, § 459.) In exchange, the trial court imposed a two-year split sentence—one year in custody and one year on mandatory supervision. (§ 1170, subd. (h)(5)(b).) After defendant began serving the mandatory supervision portion of his sentence, a petition was filed alleging that he violated the terms by failing to report to the probation department. Defendant admitted that he was in violation of his mandatory supervision, and the court sentenced him to county prison for two years, with credit for time served.

On appeal, defendant argues that: (1) the court erred in sentencing him to a two-year prison term, in excess of the state's promise in the plea agreement; and (2) the court erred by failing to adequately describe and impose the correct amounts for certain fees. We modify the judgment to impose a \$30 court facilities fee pursuant to Government Code section 70373, subdivision (a)(1), and a \$40 court security fee pursuant to Penal Code section 1465.8, subdivision (a)(1). In all other respects, we affirm.

PROCEDURAL BACKGROUND

Defendant was charged by felony complaint with receiving stolen property (§ 496, subd. (a), count 1) and second degree burglary of a vehicle (§ 459, count 2). It was also alleged that, at the time of the offenses, defendant was released from custody on bail or on his own recognizance in another case, within the meaning of section 12022.1.

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

Defendant entered a plea agreement and pled no contest to count 2, in exchange for the dismissal of the remaining count and allegation and a two-year split sentence, comprised of one year in custody and one year of mandatory supervision, upon release from custody. (§ 1170, subd. (h)(5)(B).) As part of his mandatory supervision, he agreed to report to the probation officer immediately upon release from custody and once every 14 days or as directed. Prior to entering his plea, the court confirmed defendant's understanding that if he violated his mandatory supervision, he could "get sentenced up to the balance of that two years." Defendant entered his plea on December 12, 2013. On January 13, 2014, the court sentenced him to county prison for two years, then suspended the second year and ordered him to be on mandatory supervision for that year, on specified terms. The court ordered him to pay "a \$60 criminal conviction fee and court security fee." The court also dismissed the remaining count.

Defendant was released from custody early on February 6, 2014. He was then placed on mandatory supervision. He was directed to report to the probation department.

On April 4, 2014, the probation department filed a petition to revoke the mandatory supervision, based on defendant's failure to report to the probation department, failure to cooperate with probation, and failure to keep the probation officer informed of his place of residence.

The probation department filed a report and recommended that the mandatory supervision remain revoked, and the two-year sentence previously suspended be imposed,

with credit for time served (actual days and conduct days, plus 53 days for the days he was on mandatory supervision).

The court held a hearing on June 30, 2014, and indicated at the outset that it was going to follow the probation officer's recommendation, if defendant did admit the violation(s). Defense counsel informed the court that defendant was prepared to admit a violation and asked the court to just impose a 30-day penalty and rerelease him. In light of the court's indicated sentence, defense counsel argued that defendant agreed to one year in custody and one year in mandatory supervision, and that "by imposing the remaining term of time under mandatory supervision [it would] not [be] following the agreed upon plea" She added that defendant would not be "getting the benefit of his bargain of the one-year mandatory supervision." The court stated that defendant had an apparent history of absconding in other counties, and that he had absconded in his current county. The court noted that defendant failed to comply with the terms of the mandatory supervision and that it felt that "[it was] time that he be given the entire sentence." The court then addressed defendant directly and expressly told him that if he wanted to admit his violation(s), it was going to impose the full two years, with credit for time served. Defendant confirmed that he understood. He then admitted the violations. The court sentenced defendant to the middle term of two years in county prison for the offense of second degree burglary. The court awarded him 309 days of custody credits.

ANALYSIS

I. The Trial Court Properly Imposed a Two-Year Sentence With Credit for Time Served

Defendant contends that the court erred when it imposed the two-year prison term, without giving him credit for a full year of custody. He argues that he should have been given credit for the full year, even though he was released from custody early. In other words, he claims the law allowed the court to revoke his mandatory supervision and return him to custody, but only for the term he had remaining on his mandatory supervision period. He asserts that the court's sentence violated due process because it was a violation of his plea agreement. We disagree.

The Criminal Justice Realignment Act of 2011 (the Realignment Act) took effect on October 1, 2011. (Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 12, § 1; § 1170, subd. (h); *People v. Catalan* (2014) 228 Cal.App.4th 173, 178 (*Catalan*); *People v. Scott* (2014) 58 Cal.4th 1415, 1419.) “Under the Realignment Act, qualified persons convicted of nonserious and nonviolent felonies are sentenced to county jail instead of state prison. [Citation.] Trial courts have discretion to commit the defendant to county jail for a full term in custody, or to impose a hybrid or split sentence consisting of county jail followed by a period of mandatory supervision.” (*Catalan, supra*, 228 Cal.App.4th at p. 178.) “During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. . . . Any proceeding to revoke or modify

mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3.” (§ 1170, subd. (h)(5)(B).) Section 1203.2, subdivision (c), provides that “if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke the suspension and order that the judgment shall be in full force and effect.” Furthermore, the trial court “enjoys broad discretion in matters involving probation and sentencing, and the defendant bears the burden of proof when alleging an abuse of discretion.” (*Catalan, supra*, 228 Cal.App.4th at p. 179.)

Here, under the plea agreement, the trial court sentenced defendant to a two-year prison term, to be served locally as a split sentence under the Realignment Act. His sentence consisted of one year in county prison followed by one year of mandatory supervision. Defendant agreed that if he violated his mandatory supervision, he could be sentenced up to the balance of that two years. He thereafter violated the terms of his mandatory supervision, and the court imposed the two-year term, with credit for time served. Thus, there was no violation of the plea agreement. We further note that, at the violation hearing, the court directly addressed defendant and stated, “So, [defendant], if you want to admit your violation, I’m going to impose the full two years and you’re going to get the credits that I have indicated, okay.” Defendant then voluntarily admitted the violation(s).

Defendant argues that he satisfied the first year of custody through the early release program and could only be sentenced to the one year that was suspended and for

which mandatory supervision was imposed. However, defendant cannot receive actual custody credit for time that he did not serve in custody. (*People v. Washington* (1978) 80 Cal.App.3d 568, 573 [court concluded that the “appellant’s contention that he should, additionally, be granted credit for time which he did *not* serve on the original county jail sentence due to early release to be entirely without merit”].) Furthermore, the sheriff’s decision to release defendant early did not alter the court’s original sentence, which required one year of actual custody. Since defendant did not serve one year in custody, the court properly did not grant him credit for the full year. Defendant has not cited any authority demonstrating the court abused its discretion in sentencing him. (*Catalan, supra*, 228 Cal.App.4th at p. 179.)

We conclude that the court properly imposed a two-year sentence with credit for time served.

II. The Court Erred by Imposing Fees That it Did Not Adequately Identify

At sentencing, the court ordered “a \$60 criminal conviction fee and court security fee.” Defendant argues that the court inadequately identified the statutory bases for the fees and determined the incorrect amounts. He contends that the matter should be remanded for the court to “specify and impose the correct amounts for any fees imposed.”

Government Code section 70373, subdivision (a)(1), requires the imposition of a \$30 assessment on every criminal conviction “[t]o ensure and maintain adequate funding for court facilities.” Penal Code section 1465.8, subdivision (a)(1), requires the

imposition of a \$40 assessment on every conviction for a criminal offense. This fee is also referred to as a court security fee. (*People v. Alford* (2007) 42 Cal.4th 749, 752.) These fees are mandatory and may be added on review. (*People v. Rodriguez* (2012) 207 Cal.App.4th 1540, 1543, fn. 2.) Thus, the court should have imposed a \$30 court facilities fee, pursuant to Government Code section 70373, subdivision (a)(1), and a \$40 court security fee, pursuant to section 1465.8, subdivision (a)(1), for defendant's conviction of second degree burglary. We shall modify the judgment accordingly.

DISPOSITION

The judgment is modified to impose a \$30 court facilities fee, pursuant to Government Code section 70373, subdivision (a)(1), and a \$40 court security fee, pursuant to Penal Code section 1465.8, subdivision (a)(1). In all other respects, the judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.